

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
THOMASVILLE DIVISION**

**RIGOBERTO TAPIA-CASTANEDA, :**

Movant, :

v. :

**UNITED STATES OF AMERICA, :**

Respondent. :

---

Civil Action No. 6:05-cv-64(HL)

Crim. Action No. 6:05-cr-06(HL)

**ORDER**

This matter is before the Court on the Report and Recommendation [doc 36] of United States Magistrate Judge G. Mallon Faircloth entered on December 9, 2005. The Magistrate Judge recommends that Rigoberto Tapia-Castaneda's Motion Under 28 U.S.C.A. § 2255 be dismissed without prejudice. Tapia-Castaneda filed his Motion on December 5, 2005, alleging, among other things, that his attorney was ineffective for having failed to file a Notice of Appeal on his behalf. The Magistrate Judge noted in his Recommendation that a Notice of Appeal had been filed on Tapia-Castaneda's behalf, and that the appeal was pending. Thereafter, on December 19, 2005, Tapia-Castaneda filed a response to the Recommendation, in which he noted that, in view of the fact that an appeal was pending, he had no objection to the dismissal, without prejudice, of his Motion. In view of the foregoing, therefore, the Court hereby accepts the Recommendation of the Magistrate Judge. Tapia-Castaneda's Motion Under 28 U.S.C.A.

§ 2255 is hereby dismissed without prejudice.

**SO ORDERED**, this the 11<sup>th</sup> day of January, 2006.

s/ **Hugh Lawson**  
**HUGH LAWSON, JUDGE**

mls